



~~CHAMBERS 689-90-004 FILE~~

U.S. Department of Justice

Environment and Natural Resources Division

Law and Policy Section
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11/14/06

Richard W. Wieking, Clerk
United States District Court
for the Northern District of California
San Francisco Division
16-1111 U.S. Courthouse
450 Golden Gate Ave.
San Francisco, CA 94102

Re: Northern California Riverwatch v. Sonoma County Water Agency,
United States District Court for the Northern District of California
(San Francisco), Civil No. 3:05-CV-3749 SC

Dear Mr. Wieking:

On October 2, 2006, the Citizen Suit Coordinator for the Department of Justice received a copy of the proposed consent judgment in the above-referenced case for review pursuant to the Clean Water Act, 33 U.S.C. § 1365(c)(3). This provision provides, in relevant part:

No consent judgment shall be entered in any action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

See also 40 CFR 135.5 (service on Citizen Suit Coordinator in the U.S. Department of Justice). A settlement that does not undergo this federal review process is at risk of being void.

The United States requests that, where a consent judgment provides for the payment of sums to a third party which is to undertake a supplemental environmental project (SEP), the third party provide a letter to the Court and to the United States representing that it is a 501(c)(3) tax-exempt entity and that it (1) has read the proposed consent judgment; (2) will spend any monies it receives under the proposed judgment for the purposes specified in the judgment; (3) will not use any money received under the proposed consent judgment for political lobbying activities; and (4) will submit to the Court, the United States, and the parties a letter describing how the SEP funds were spent.

In this case, the Aquatic Ecosystem Laboratory of the Center for Watershed Sciences at the University of California, Davis will receive a payment of \$75,000 under this consent judgment for a supplemental environmental project. The SEP Recipient has provided a letter making the requisite representations; a copy is attached. The United States believes that this letter will help to ensure that any monies expended under the proposed consent judgment will be used in a manner that furthers the purposes of the Act, and that is consistent with the law and the public interest.

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Given these representations, the United States has no objection to entry of the proposed consent judgment. We accordingly notify the Court of that fact. The United States affirms for the record that, under prevailing law, it is not bound by this settlement. See, e.g., Martin v. Wilks, 490 U.S. 755, 762 (1989) ("A judgment or decree among parties to a lawsuit resolves issues as among them, but does not conclude the rights of strangers to those proceedings"); Hawthorn v. Lovorn, 457 U.S. 255, 268 n.23 (1982) (Attorney General is not bound by cases to which he was not a party); United States v. Atlas Powder, 26 Env't Rep. Cas. (BNA) 1391 (E.D. Pa. 1987) ("The United States is not bound by settlement agreements or judgments in cases to which it is not a party"); 131 Cong. Rec. 15,633 (June 13, 1985) (statement of Senator Chafee, on Clean Water Act section 505(c)(3), confirming that the United States is not bound by settlements when it is not a party). The United States also notes that, if the parties subsequently propose to modify any final consent judgment entered in this case, the parties should so notify the United States, and provide the United States with a copy of the proposed modifications, forty-five days before the court enters any such modifications. See 33 U.S.C. 1365(c)(3).

We appreciate the attention of the Court. Please contact the undersigned at (202) 514-0750 if you have any questions.

Sincerely,

/s/ R. Justin Smith
R. Justin Smith, Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Law & Policy Section
P.O. Box 4390
Washington, D.C. 20044-4390

cc: Randy Poole, Sonoma County Water Agency
Jack Silver, Plaintiff's counsel

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ONE SHIELDS AVENUE
DAVIS, CALIFORNIA 95616-8576

October 23, 2006

Mr. Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402

Dear Mr. Silver,

I have read section II. B. of the Consent Decree dated September 12, 2006 between Northern California River Watch and the Sonoma County Water Agency. The Aquatic Ecosystem Analysis Laboratory of the Center for Watershed Sciences at the University of California, Davis agrees to accept the \$75,000 to perform the study as outlined in Section II. B contingent upon our Office of Research, Sponsored Programs Office reviewing the terms and entering into a mutually acceptable agreement. Once the agreement is finalized, we agree on behalf of The Regents of the University of California, to be bound by the terms of the agreement.

Sincerely,

A handwritten signature in black ink, reading "Michael L. Johnson".

Michael L. Johnson, Ph.D.,
Director, Aquatic Ecosystems Analysis Laboratory
Associate Director, Center for Watershed Sciences

A handwritten signature in black ink, reading "Kimberly Lamar".

Kimberly Lamar
Contracts & Grants Analyst
Office of Research, Sponsored Programs
(530)747-3924

Cc: Jeff Mount, Director, Center for Watershed Sciences
Ellen Mantallica, Assistant Director, Center for Watershed Sciences